

REMARKS

In the Office Action, restriction is deemed required under 35 U.S.C. § 121 to one of the following groups of claims:

- Group I: Claims 1-16, drawn to an extraction method, classified in class 424, subclass 725;
- Group II: Claims 17-20, drawn to a method of separating analytes, classified in class 424, subclass 725;
- Group III: Claims 21-33, drawn to a continuous cascading extraction method, classified in class 424, subclass 725;
- Group IV: Claims 34-42, drawn to an ingestible formula comprising Byrsonima species, classified in class 424, subclass 725;
- Group V: Claims 42-51, drawn to an ingestible formula comprising Aesculus and Craetaegus species, classified in class 424, subclass 725;
- Group VI: Claims 52-56, drawn to a Jojoba extract, classified in class 424, subclass 725;
- Group VII: Claims 57-59, drawn to a method of satiating hunger, classified in class 424, subclass 725;
- Group VIII: Claims 60-70, drawn to an ingestible formula comprising Turnera and Phaffia, classified in class 424, subclass 93.5; and
- Group IX: Claims 71-78, drawn to an ingestible formula comprising Heimia species, classified in class 424, subclass 725.

In addition, in the Office Action, election of species is deemed required under 35 U.S.C. § 121 to one of the following claimed inventions:

- (a) natural sources recited in claims 2, 16, 20 and 22;
- (b) volatile substances recited in claims 8, 18 and 27;
- (c) cosolvent in claims 12 and 31;
- (d) bioactive substances in claim 42;
- (e) bioactive substances in claim 51;
- (f) bioactive substances in claim 70; and

(g) bioactive substances in claim 78.

Applicants provisionally elect Group II, claims 17-20, with traverse and elect species (a) natural sources recited in claims 2, 16, 20 and 22.

As recited under M.P.E.P. 803, restriction is appropriate only when the groups can be shown to be distinct and there would be a “**serious burden**” placed on the Examiner to examine more than one group of claims. Applicant respectfully submit that a search of all the claims together would not impose a serious searching burden to the examiner.

The burden to establish a prima facie restriction is on the U.S. Patent and Trademark Office (“PTO”), not the applicant, and in this case has not been met. Specifically, the Office Action consists of a list of the nine classes of claims and paragraphs taken from the Manual of Patent Examining Procedure (“MPEP”). These specific paragraphs are for use “after” the examiner has provided an explanation as to why the claims fall into different groups. No reasoning whatsoever is provided as to why the instant claims would impose a serious searching burden and it would seem that no serious searching burden exists because all the claims fall into the same class and most the same subclass. Thus, the PTO has not established a prima facie case for any claim or species restrictions and this requirement should be withdrawn.

Furthermore, in the instant application there are two sets of claims. The first set, comprising claims 1-33, is directed to methods of isolating bioactive substances from natural sources. The second set, comprising claims 34-78, is directed to formula comprising these same bioactive substances. Thus it would seem that any prior art search would require an examination of prior art for both sets of claims. However, the claims have been divided by the examiner into “nine” different groups and seven different species. Interestingly, all of these are classified in class 424, and eight of the nine are even in the same subclass, 725. As all claims fall into the same class, and the vast majority fall into the same class and subclass, it does not appear that a single search would be a serious burden on the examiner. This would also hold true for the species restriction.

For all these reasons applicants respectfully request that the restriction requirement and species restriction be withdrawn.

Conclusion

If any additional fees are believed to be due with the filing of this Response, not otherwise accounted for herein, applicants respectfully direct that any all fees including any fees for a further extension of time be charged to Deposit Account No. 08-1641.

Respectfully submitted,
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